

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8485 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAVUBHA PRATAPSIKH JADEJA

Versus

KN BHATT OR HIS SUCCESSOR IN OFFICE

Appearance:

MR H/R/PRAJAPATI FOR TUSHAR MEHTA for Petitioner

MR J.C.GOHL,ASST.GOVERNMENT PLEADER for Respondent No. 1

MR BHARAT T RAO for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 05/02/99

ORAL JUDGEMENT

In effect, in this petition under Article 226 of the Constitution of India, two writs have been prayed for, (i) writ of certiorari for quashing the detention order dated 17.8.1998 passed by the District Magistrate ,Anand under section 3 (2) of the Prevention of Black marketing

and Maintenance of Supplies of Essential Commodities Act, 1980 (' the Act') and (ii) writ in the nature of Habeas Corpus for immediate release of the petitioner from illegal detention.

From the grounds of detention, it seems that at the time of surprise check of the petrol pump of the owner /licence holder, certain irregularities were found and it was also found that some solvent , other than diesel, was being mixed at the petrol pump of the owner. A sample was taken. It further proceeds that serious obstruction was caused in due discharge of duties of public servants engaged in raiding the petrol pump of the owner /licence holder. For this, a separate criminal case has been registered in a competent court. The petitioner was the Manager of the aforesaid petrol pump. On identical allegations, he was also detained under an order of detention under section 3 (2) of the Act. The said order of detention has been challenged in this writ petition.

The writ petition was subsequently amended and para 4 (h) was added in which it was submitted that in connection with criminal case No. 51 of 1998 under sections 147,148, 332, 343, 584,506 (2), 201, 307 and 186 IPC,registered on 28.7.1988, the petitioner was arrested on 30.7.1998. The detention order was passed much thereafter viz. on 17.8.1998.

It has been contended that it is not disclosed in the grounds of detention that the petitioner was arrested on 30.7.1998 . It was also argued that it is not reflected in the grounds of detention that the detaining authority was aware that the petitioner was in judicial custody on the day the detention order was passed against him. This omission, according to the learned advocate for the petitioner, has rendered the impugned order invalid and illegal.

Counter affidavit has been filed by the detaining authority , but in the said counter affidavit, it has not been denied that the petitioner was arrested on 30.7.1998. In the grounds of detention, it is not disclosed that the detaining authority was aware of the fact that the petitioner was in judicial custody on the day the impugned order was passed. An attempt has been made to supplement this defect through the counter affidavit, but that attempt has also miserably failed. There is no clear deposition in the counter affidavit that the detaining authority was aware on the date of passing of the impugned order that the petitioner was in judicial custody since 30.7.1998. What has been tried to

be explained in the counter affidavit is that bail application of the petitioner was rejected by the competent court and he was likely to be enlarged by the High court and thereafter he may continue his illegal black marketing activities. This, in my mind, is not requirement of law. Law of the land on the subject has been summarised finally by the Apex court in Abdul Sathar vs. Union of India, AIR 1991 SC 2261 after considering catena of decisions in this case. Whether order of detention can be passed against a person who is already in judicial custody or not was considered and reviewed by the Apex court and finally six guidelines in this direction were laid down by the Apex court. The first guideline seems to be important and applicable to the facts of the instant writ petition. The said guideline No.1 is that detention order can validly be passed even in case of a person who is already in judicial custody. In such case, it must appear from the grounds of detention that the authority was aware that the detenu was already in custody.

From this first guideline itself, it is clear that there is no prohibition or bar in passing the detention order against a person who was already in judicial custody on the day when the impugned order was passed. However, further requirement is that whenever an order is proposed to be passed against that person who was already in judicial custody, the detaining authority must make it clear in the grounds of detention that he was aware that the detenu was already in custody. This second requirement is not directory but mandatory and the mandate of the Apex court is that such disclosure that the person was in judicial custody must be reflected in the grounds of detention and not in the subsequent counter affidavit filed at the time of hearing of the writ petition challenging the detention order.

I have carefully gone through the grounds of detention and I am unable to find therein that the detaining authority has made even a passing reference that the petitioner was in judicial custody on the day the impugned order was passed. Likewise, it is not disclosed in the grounds of detention that the detaining authority was aware that the petitioner was already in custody when the impugned order was passed. This defect cannot be supplemented at a subsequent stage by filing counter affidavit which is also vague.

The result, therefore, is that the impugned order of detention against the petitioner who was in judicial custody, is rendered illegal inasmuch as awareness of

the detaining authority that the petitioner was in judicial custody is not reflected in the order of detention or in the grounds of detention. This ground alone is sufficient for setting aside the impugned order. The writ petition in these circumstances succeeds and is hereby allowed. The detention order dated 17.8.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

parekh